Mr. Van de Water's qualifications or integrity. However, the Senator stated that he would oppose all motions to report the nomination since he was sure that the nomination would be confirmed if reported.

Senator BAKER has filed a resolution to discharge the Labor and Human Resources Committee from consideration of the Van de Water nomination. Because of the press of business, Senator BAKER has not been able to bring the resolution to the attention of the Senate. Mr. Van de Water's nomination will now have to be resubmitted by the President.

Mr. President, the nomination will be resubmitted and referred to the Labor and Human Resources Committee. I am hopeful that my colleagues on the committee who opposed Mr. Van de Water will abandon the obstructionist tactics that have been used to deny the Senate its constitutional authority to advise and consent on Presidential appointments.

The committee system is integral to the Senate's ability to perform its constitutional duties. However, it is the Senate, Mr. President, not any particular committee, which is vested with the constitutional authority to approve or reject Presidential nominees. It is my opinion that committees have been delegated authority by the Senate to report and make recommendations about the fitness of those nominees referred to them. I believe that a committee misuses that delegated authority when it refuses to report back to the Senate on a referred nomination.

Some Senators may argue that the approval of a discharge resolution would serve to undermine the committee structure of the Senate. Mr. President, the committee structure is threatened much more grievously when members of a committee deny the Members of the Senate their right to engage in the advise and consent process.

Mr. President, I request those members of the Labor and Human Resource Committee to rethink their tactics. I support their right to oppose Mr. Van de Water. However, I ask them to reconsider the serious implications of their action if they refuse to report the Van de Water nomination. If the committee again fails to report the nomination, it will have usurped a prerogative granted by the Constitution to the Senate, not to the committee. Under such circumstances, a discharge resolution is not only appropriate, but also necessary to maintain the integrity of the advise and consent process.●

SUPPLEMENT TO YEAREND REPORT

Mr. BAKER. Mr. President, as a matter of informaton, this is a supplement to the yearend report which contained some of this information given by me earlier in the day. The following information may be of some interest to the Senators: The Senate has been in session for a total of 165 days during its first session. One hundred and fifty-three days have been business sessions and 12 days have been pro forma sessions. As of 7 p.m., 25 minutes ago, the Senate will have been in session for 1,077 hours and 25 minutes.

Mr. President, as of this moment, there have been 450 legislative record votes and 47 Executive Calendar rollcall votes, for a total as of this moment of 497 rollcall votes for this session of Congress.

UNANIMOUS CONSENT REQUEST

Mr. BAKER. Mr. President, there may be other business that can be transacted. I believe, indeed, there are other measures that can be dealt with and other matters that must be addressed. No matter, however, of other than routine importance will be taken up if the wishes of the leadership are taken account of, with the exception of calendar order No. 293, S. 391, the agents identity bill. If the minority leader is prepared at this time, Mr. President, I ask that the Chair lay before the Senate S. 391, the agents identities bill.

Mr. BRADLEY. Mr. President, reserving my right to object—I have discussed this with the majority leader prior to this moment—unless the majority leader could assure me that through a unanimous-consent agreement, the first committee amendment would not be subject to a tabling motion or to a substitute or to a perfecting amendment until there has been time to fully debate the issue, I might be forced to object to proceeding to S. 391.

Mr. BAKER. Mr. President, I thank the Senator. If he will give me just a moment, I may be able to give him an answer.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. Mr. President, I cannot agree to the request of the distinguished Senator from New Jersey.

INTELLIGENCE IDENTITIES PROTECTION ACT OF 1981

Mr. BAKER. Mr. President, I ask that the Chair lay before the Senate the item just identified.

Mr. BRADLEY. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. BAKER. I move that the Senate proceed to the consideration of S. 391, calendar No. 293.

Mr. BRADLEY. I object.

Mr. BAKER. Mr. President, I do not believe the Senator can object. The motion is subject to debate, I believe. If the Senator wishes to do that, I am prepared to receive his comments on the subject.

Mr. President, is the pending motion the motion to proceed to the consideration of the measure?

The PRESIDING OFFICER. The Senator is correct.

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President, we have begun a process which I think will give us an opportunity to clearly debate the issues here between the intent provision and the reason-to-believe provision, and it is my expectation that this will continue for a number of hours, because I believe this is a very critical measure.

Before we move to proceed or before we take a vote on any provision, I think the Senate should have the benefit of a full airing of this issue.

Mr. MATHIAS. Mr. President, will the Senator yield for a question?

Mr. BRADLEY. I will yield for a question, without losing my right to the floor.

Mr. MATHIAS. Is it not true that there is a very serious question of constitutionality which surrounds the whole issue that is represented by this legislation?

Mr. BRADLEY. I would agree with that.

Mr. MATHIAS. Therefore, the specific issue to which the Senator from New Jersey has addressed his interests this evening is, in fact, one that will be of enormous importance as we progress with the constitutional issues that are inherent in the bill. If we are not prepared to give very careful attention to the first committee amendment, which includes within it the intent question, we then may neglect the fundamental constitutional issue and put in jeopardy the bill in any form.

So those who wish to see some legislation pass in the field of agent identity would be well advised, I think, to pay very careful attention to the issue that has been identified by the Senator from New Jersey; because until that is carefully considered, we may run the risk of passing a bill which will not pass constitutional muster.

Mr. BAKER. Mr. President, will the Senator yield to me, without losing his right to the floor?

Mr. BRADLEY. I am prepared to yield to the majority leader, without losing my right to the floor, and so long as yielding does not count as a first speech.

Mr. BAKER. Mr. President, I ask unanimous consent that the Senator may yield to me, without losing his right to the floor and without the resumption of his speech being counted as a second speech during this day.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, I said earlier that no matter would be taken up other than routine and regular matters. I must make one exception to that. I do not anticipate this, but in the event there were problems in the House of Representatives with the farm bill, for example, or with other matters not anticipated, and it were necessary for the Senate to act on some unexpected matter of an emergency nature, I would ask the Senate to proceed to the consideration of such an item.

What I had in mind was that no other calendar items at this time that I am aware of, other than routine matters that can be taken up and dealt with by unanimous consent or only after brief debate, will be within the contemplation of the leadership.

I thank the Senator for yielding.

INTELLIGENCE IDENTITIES PROTECTION ACT OF 1981

Mr. BRADLEY. Mr. President, the bill we are presently debating is one of the most important pieces of legislation to come before Congress. It deals with the national security and the constitutional rights of all Americans. The issues the bill raises merit extensive, reasoned debate. And they deserve the careful scrutiny of every Senator.

This bill is responsive to a grave problem the U.S. intelligence community faces in fulfilling its foreign intelligence responsibilities. In recent years, a small number of Americans, including some former CIA employees, have been engaged in a systematic effort to undermine our clandestine intelligence operations by disclosing the names of agents. Yet so far, none of the people responsible for these disclosures has been indicted under the espionage laws or any other law.

The failure to prevent these wanton acts underscores the need for a new law that specifically addresses this problem. Until we pass such a law, our intelligence agents will become less and less effective while at the same time they will be exposed to increasing danger. In addition, our relations with foreign sources of intelligence will continue to deteriorate because of the fear these sources feel for their own safety. Unless we can protect U.S. agents and their foreign sources from malicious disclosure, our foreign intelligence activities will be severely impaired. And because we will have diminishing access to intelligence information that is timely and accurate, our national security will suffer.

Accordingly, I support the bill that the Judiciary Committee has reported. This bill makes criminal the disclosure of intelligence identities in certain specified circumstances. It applies to three well-defined and limited classes of individuals. The first consists of those who have had authorized access to classified information identifying undercover agents. These are primarily U.S. Government officials who have a need to know the identity of CIA operatives. Because their access to the identities of covert agents derives from a position of trust, the bill penalizes their disclosure of this information most heavily.

The second class also consists of individuals who have had authorized access to classified information, but not necessarily information directly identifying covert agents. In order for members of this class to be penalized under the bill, it must be shown that they learned an intelligence identity as a result of their access to classified information.

The third class of individuals affected by the bill are those who may have never had authorized access to classified information but who, in the course of an effort to expose covert agents and with an intent to impair or impede the foreign intelligence activities of the United States, disclose information to unauthorized persons that identifies an individual as a clandestine agent.

Mr. President, I believe the bill as reported has been carefully considered and skillfully drafted. It affords appropriate protection to intelligence agents by making criminal those disclosures which clearly represent a conscious and pernicious effort to identify and expose covert agents with the intent to damage the national security.

At the same time, the bill avoids infringing the constitutional rights of innocent Americans and unduly impeding the public's right to know. In particular, it is drafted so that casual discussion, political debate, the legitimate activities of journalists, or the disclosure of illegality or impropriety in Government will not be inhabited by enactment of this legislation.

Mr. GORTON. Mr. President, will the Senator yield for a question?

Mr. BRADLEY. I am prepared to yield for a question without losing my right to the floor.

Mr. GORTON. I thank the distinguished Senator from New Jersey.

As the Senator is well aware by reason of his own participation in this debate, it revolves around whether or not a specific intent should be required in order to sustain a conviction for a violation of the act or, as proposed by Senator CHAFEE, a considerably lower standard of proof should be adopted pursuant to which the act would be violated if the accused person had acted with reason to believe that his activities would impair or impede the foreign intelligence activities of the United States of America.

Persons from both sides of this debate have discussed the matter with me for some time. I had tentatively at least reached the conclusion that the language which will be proposed at some point in the future by the Senator from Rhode Island might well fail to protect adequately the constitutional or free speech rights of a number of persons. Among other things it does not require that any actual harm take place to the intelligence activities of the United States in order to sustain a conviction.

While their fears may or may not be unfounded, many persons concerned with freedom of the press are concerned that there would be a chilling effect with the passage of a statute as it was passed by the House of Representatives. On the other hand, as the Senator from New Jersey knows, proof of intent beyond a reasonable doubt when that intent is highly subjective is exceedingly difficult.

Therefore, when we return from the recess I will propose the following compromise amendment and I ask both the Senator from Rhode Island and the Senator from New Jersey to consider over the recess whether it meets the appropriate expectations of both, as both have the same goal, that is, to see to it that legitimate intelligence activities are protected. My amendment would take the structure of the Biden amendment itself. It would require a proof of intent in order for a conviction. But it would go on to include the following language in the way of definition of intent:

"For purposes of this subsection intent to impair or impede the foreign intelligence activities of the United States shall be—

"(1) established by proof of subjective intent to impair or impede such activities; or

"(2) inferred from the acts of an individual which impair or impede such activities where the impairment or impediment of such activities is found to be a natural consequence of such acts.".

In other words, it authorizes the normal proof of subjective intent but it also states that where the Government can prove, first, that actual impairment or impediment of intelligence activities has taken place and, second, that the individual has with the source of that information an intent to impair or impede intelligence activities of the United States can be inferred from the very fact of disclosure itself.

I believe it to be a middle ground. I believe that it should meet the concerns of each party to this.

And my question to the Senator from New Jersey at this point is simply whether or not he and other defenders of the Biden amendment are willing to consider such a middle ground during the course of the next month while this bill is laid aside and would the Senator from Rhode Island be willing to consider such a proposed response?

Mr. BRADLEY. Let me say to the Senator from Washington that I think his suggestion is constructive and it is a perfect example of why we should not rush this bill through in the dying hours of a session.

I think precisely it is something that could be considered over the next few weeks, that we manage to defer action on this issue until the next session, and I would expect that to be the case. I thank the Senator very much for his thoughtful question that he put to the Senator from New Jersey and in his usual thoughtful manner it merits further and lengthy discussion and evaluation.

Mr. QUAYLE. Mr. President, will the Senator yield for a question?

Mr. BRADLEY. I am prepared to yield for a question without losing my right to the floor or without having it count as a first speech.

Mr. QUAYLE. I thank the Senator.

I shall follow up on the line of questions that the distinguished Senator from Washington presented. He has talked about a compromise version between the intent language and the reason-to-believe language. I would certainly hope that many of us who have been involved in discussing this language would take a very thorough look.

The Senator from Washington has shown me this language and my first reaction to it is that perhaps this is something that many of us have been looking for.

Is there any inbetween language between the intent standard, that has been

adopted by the Senate Judiciary, and the reasonable belief standard, that has been adopted by the House of Representatives?

As we all know, if the Senate will adopt the intent language that will probably prevail in the conference, though no one knows for sure how the conference committee would go.

I would certainly encourage many of us who have been involved and those who want to see the completion of this legislation to take Senator GORTON's suggestion. It is one that is very thought provoking, one that I know as he always does has taken a great deal of time and so that is probably another reason I would suggest that if we will go over the holidays we will have more time to discuss this and then to return.

I will at this time yield back the floor to the Senator from New Jersey.

Mr. BRADLEY. The answer to the Senator's question is yes. I think that this time could be used valuably. I would expect that to be the case.

Mr. President, as I was saying I believe the bill as reported has been carefully considered and skillfully drafted. It affords appropriate protection to intelligence agents by making criminal those disclosures which clearly represent a conscious and pernicious effort to identify and expose covert agents with the intent to damage the national security.

At the same time, the bill avoids infringing the constitutional rights of innocent Americans and unduly impeding the public's right to know. In particular, it is drafted so that casual discussion, political debate, the legitimate activities of journalists, or the disclosure of illegality or impropriety in government will not the inhibited by enactment of this legislation.

Mr. CHAFEE. Mr. President, I wonder if the Senator from New York will yield for a question.

Mr. BRADLEY. I am prepared to yield for a question. I wish to get through my opening statement before I yield for a question if the Senator from Rhode Island does not mind. I am sure he will have plenty of time to answer questions.

Mr. CHAFEE. Could he give us some indication how long the opening statement is?

Mr. BRADLEY. The opening statement will be somewhat short of 4 hours and 15 minutes.

Mr. CHAFEE. Do I understand him to say he is not prepared to yield for a question until we have 4½ hours of opening statement?

Mr. BRADLEY. No, the Senator is incorrect. I will be prepared to yield for a question at some point after I finish the opening statement and at least read into the RECORD some of the thoughts that many of the leading newspapers of this country expressed.

I think at that time I would be prepared for a number of questions. But I think the record should reflect the broad base of support of the Judiciary Committee bill. Once that is in the record we can deal with the Senator from Rhode Island's questions. I have no problem with that. I welcome his questions. I think, in fact, the more fully this issue is debated and discussed after the record has been made clear, the better it will be for the Senate in its final resolution of this issue.

Mr. President——.

Mr. CHAFEE. Was the question, Is that satisfactory, was the Senator about to say?

Mr. BRADLEY. Mr. President, I think that is satisfactory, and I know the Senator from Rhode Island will be poised with any number of questions to ask at the appropriate time.

Mr. President, it is essential that this last feature of the bill be preserved, and that feature is that it is drafted so that casual discussion, political debate, legitimate activities of journalists and disclosure of impropriety in Government will not be prohibited. It is very important that this feature be preserved. There is no doubt that we need effective prohibitions on malicious disclosures of the identity of intelligence agents.

But there is similarly no doubt that we must preserve the fundamental right of free speech guaranteed all Americans by the first amendment, and we must jealously guard the important role played by the press in exposing the truth.

Let me reemphasize those two points: There is no doubt that we must preserve the fundamental right of free speech guaranteed all Americans by the first amendment, and we must jealously guard the important role played by the press in exposing the truth.

S. 391 strikes a proper balance between protecting the men and women who risk their lives as covert agents and guarding the interest all of us have in freedom of speech and a free press. Because S. 391 does the job, I am concerned that this attempt to substitute language from the House-passed bill would upset this balance.

In the case of individuals who may never have had access to classified information, the House bill requires only proof of reason to believe that disclosures would impair or impede intelligence activities. The bill before us requires intent. I am concerned that substituting the reason to believe for the intent test would chill significant public debate on government activities even where the purpose of the debate was to expose serious impropriety.

It also risks imposing criminal sanctions on those who disclose information of a purely factual nature which they believe the public has a right and a need to know. The penalty would apply to situations in which the identification derives entirely from published U.S. Government documents and where the disclosure would not place any lives in jeopardy.

Finally, it would apply not only to those in the business of naming names, but also to publishing activities fully protected by the first amendment.

Mr. President, there is no need for us to substitute reason to believe for intent. The administration is on record as stating either version of the bill is acceptable and will be enforceable. In a letter to Chairman BOLAND of the House Intelligence Committee, CIA Director Casey stated he could support the Senate Judiciary Committee version, the "intent" version. The Justice Department has indicated their agreement with Mr. Casey's position and the hearing record on this bill fully confirms that either version will do the job.

Mr. CHAFEE. Has the Senator read those complete letters in the RECORD or has he extrapolated parts of them?

Mr. BRADLEY. I would be pleased—Mr. President, I have not yielded for a question.

The PRESIDING OFFICER (Mr. QUAYLE). The Senator from New Jersey has the floor.

Mr. BRADLEY. Mr. President, if both versions are acceptable to the agencies, they are intended to protect, why then should we risk needlessly infringing freedom of speech and freedom of the press?

We have been told that the reason-to-believe version affords ample protection for the press because of the other protections of the bill. In fact, these conditions simply describe the activities of an investigative journalist. Consider each in turn:

First. Pattern of activities. This is exactly what an investigative reporter engages in when on a story such as the current New York Times effort to find out whether any CIA officials worked with Wilson and Terpil in providing training and recruiting for terrorists.

Second. Reason to believe. The CIA asserts that identifying any covert agents makes it harder to recruit agents and hence a reasonable person would conclude that any disclosure would harm intelligence. Moreover, most journalists would check with the CIA before publishing and would be told that disclosure would cause injury, and therefore would not publish.

Third. In fact identity. This simply requires that the story be factual.

Fourth. Unauthorized disclosure. Repeating an identity to an editor or printing would constitute such disclosure.

Fifth. Knew that a covert agent was being identified. This element would be met by the story that the individual was an undercover CIA agent.

Sixth. Affirmative measures to conceal. Any reporter would know that the CIA was trying to conceal the identity of all covert agents.

Thus, the "reason-to-believe" standard would cover all disclosures by an investigative reporter.

We have also been told that it is not necessary to name names, that responsible journalists do not name names. That is simply not the case. I have here on the floor with me articles and books by responsible journalists and authors, which include the names of covert agents as defined in the bill, and I would like the proponents of the "reason to believe" approach to explain to me whether the authors of these articles, which seem to respond to legitimate concerns of the public and their right to know, would be criminally liable under the terms of the amendment.

Specifically I would like the proponents of the reason-to-believe version to answer questions regarding each of the articles. Do they believe that the article

or book should be published with the names included, first of all? Second of all, do they believe the publication would be covered by S. 391 with the reason-to-believe standard and if they do not why not?

Mr. President, this is a very serious issue.

Mr. CHAFEE. Is that a question the Senator is addressing?

Mr. BRADLEY. It is a question that I am addressing in a rhetorical sense, and I hope that at some point later—I have been into this for only 25 minutes—that the Senator would have adequate time. I am sure he wants to hear the articles before he responds to them. I am sure he does not presuppose he is going to respond generically to all activities of the press. I am sure he wants to be precise in his response to a particular article and, therefore, for the Senator's benefit and the Senate's benefit I feel we ought to hear some of these articles, and I am prepared to read these articles at the appropriate time.

Mr. CHAFEE. Is the Senator ready to receive an answer immediately?

Mr. BAUCUS. Mr. President, if the Senator will yield before he cites those articles——

Mr. BRADLEY. Will the Senator withhold the request until a later time? I know the Senator is generous spirited and wants to be helpful, and I would welcome a statement or a question at a later moment.

Mr. President, before I begin to read the articles about which I propounded the questions that I have mentioned to the proponents of the reason-to-believe standard, I think the Senate should benefit from what a number of leading journalists and newspapers have stated about this issue.

The first editorial comes from the Pittsburgh Post-Gazette. The title of the editorial is "An Unsound Spy Law."

I will quote the editorial:

Like other human beings, journalists are sometimes tempted to exaggerate the dangers to society of measures that might limit their freedom of operation. So there is undoubtedly some hyperbole in dire predictions that investigative journalism will be fatally crippled by a bill in Congress that would punish the publication of CIA agents' names. It will take more than one clumsily drafted (or even unconstitutional) law to prevent journalists from investigating abuses by any government agency, the CIA included.

Still, that is no argument for the enactment of a bill that might needlessly interfere with journalistic investigation of the sort of illegal CIA spying on Americans that the agency would like to have the nation forget. And a bill passed last week by the House fits just that sorry description.

Designed to deal with the identification of CIA agents by agency renegades like Philip Agee, the bill as it emerged from the House Intelligence Committee would have made it a crime to identify intelligence agents only if the person making the relevation did so with the "intent to impair or impede the foreign intelligence activities of the United States." That careful language obviously was designed to deal with the discrete problem that prompted legislation in this area in the first place—the deplorable campaign by avowed opponents of U.S. foreign policy to cripple the CIA abroad.

Unfortunately, on the House floor, conservative Republican Rep. John Ashbrook succeeded in having that qualifying language stricken and replaced with a less precise provision making persons criminally liable if they "had reason to believe" that disclosure of an agent's name would harm the national interest.

The difference between the two formulas might seem a matter for legal hairsplitters. But the Ashbrook language, endorsed by the Reagan administration could be used against not only the Philip Agees of the world but also journalists who happened on CIA activities directed (illegally) against American citizens or in contravention of presidential or congressional directives.

Depressingly, similarly broad language has been adopted by framers of a Senate version of the spy bill. That makes it unlikely that a conference committee will take the—admittedly speculative—fears of journalists into account when writing a compromise measure. But those senators and representatives who believe that seemingly fine distinctions can be important should press for a defeat of the broader bill in their respective chambers.

Mr. President, that is from the Pittsburgh Post Gazette of September 28. Basically, I think it makes a very clear statement that, of course, we want to protect our covert agents but we also want to protect freedom of the press and the right of the public to know.

The next editorial comes from the Indianapolis News. It is entitled "Saving Freedom Two Ways." I will read the editorial.

The Reagan administration appears to be passing up a good opportunity to take a stand on behalf of freedom of the press and still establish firmer protection for U.S. intelligence operations.

The issue is a law to make it a crime to identify undercover U.S. intelligence agents. The House of Representatives, with the support of the Reagan administration, has approved a sweeping version of legislation to make it illegal to identify agents. The Senate Judiciary Committee, on the other hand, has approved similar legislation, but with a provision designed to protect freedom of the press.

The difference between the two bills appears on an ordinary reading to be a matter of splitting hairs. The House bill would make it a crime for anyone to identify an agent or informer "in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede" foreign intelligence operations. The proposal approved by the Senate Judiciary Committee would make exposure illegal when it is done "with the intent to impair or impede" foreign intelligence activities "by the fact of such identification or exposure."

Sen. Joseph R. Biden, Jr., D-Delaware, offered this amended version of the legislation to avoid putting a damper on legitimate investigative reporting. A reporter could be prosecuted, for example, for uncovering and naming a Soviet spy in the CIA or for naming former CIA operatives engaged in narcotics smuggling.

A Reagan Justice Department official, Richard K. Willard, acknowledged before the Senate Judiciary Committee that the House legislation could be used to thwart ordinary news media reporting, but he said it probably would not be used that way in practice.

That's nice. The Reagan administration, we keep hearing, is made up of pretty nice guys who mean no harm to anyone. But the Reagan administration will not be around forever, and a future administration might not see things quite the same way.

Why legislate a potential threat to a basic constitutional principle? The amended version of the bill should serve just as well to prosecute persons such as Philip Agee, a former Central Intelligence Agency agent, and others who have published lists of agents for the stated intent of hindering intelligence operations.

The Reagan administration has already established a disturbing pattern of efforts to close off the free flow of information required by the Freedom of Information Act. Lining up on the side of the Senate Judiciary Committee version of this bill would offer a chance to reverse that pattern. The Biden amendment also provides a way to protect intelligence agents as well as freedom of the press.

Mr. President, that is from the Indianapolis News of October 12.

I now would like to read into the RECORD, and for the benefit of all of my colleagues who are listening, an editorial from the Baltimore Sun entitled "CIA Agents and Ex-Agents."

This editorial reads as follows:

CIA AGENTS AND EX-AGENTS

If the latest version of the proposed rules for the CIA is as bad as some of the critics who have seen it say—allowing agents to infiltrate organizations and spy on American citizens at home—it certainly ought to be killed by the president of Congress.

The House of Representatives has already passed one bad, dangerous bill the CIA wants—protecting intelligence agents. It won't deter the principal exposers of the CIA's secret employees. But it will threaten many legitimate critics of foreign policy and foreign operations. Specifically, the bill would make it a criminal offense for anyone to identify a covert agent—intentionally or unintentionally.

This started out as a pretty good bill making it a crime for anyone with access to classified information to identify agents. In a House committee this was turned into a pretty bad bill making it a crime for any private citizen to use information from the public record that identified agents, if the intent of that citizen was "to impair or impede" foreign intelligence activities. That was changed on the House floor to a very bad bill making it a crime for a private citizen to use public information to identify agents if there were "reason to believe" that this would impede or impair foreign intelligence activities.

The First Amendment guarantees Americans the right to "impair or impede" foreign policies they object to. A law barring public statements that might have even an inadvertent impact on American foreign policy—which is what the law forbidding reporting on covert activities would do—is grotesque. Naturally, journalists feel this threat with special intensity, but any critic of foreign operations as well as churches, universities and businesses with international interests will feel the threat. For example, it is possible that missionaries working as spies could not be publicly disciplined or even removed by their church if such actions exposed the priest-spies or were thought to impair the U.S. government's foreign policies. That's how much the bill overreaches.

This proposal would be unconstitutional if enacted into law, and most members of Congress know it. A majority of the members of the House chose to approve the bill anyway, though, sending the matter to the Senate. Surely the senators won't pass the buck now to the courts.

The stated goal of those who drafted the agents-protection bill is to prevent a few critics of the CIA from naming names in internationally circulated magazines and

books. But these critics can do their work elsewhere. They can still expose and thus threaten the agents, and the law can't deal with them. The solution actually lies in doing a better job of keeping secrets secret. As one congressman pointed out during debate on the bill, disclosures stem from "sloppy secrecy procedures," which the KGB is aware of with or without magazine articles.

In this regard, the CIA must review its procedures for dealing with former agents. Some of them use their special status and, perhaps, special knowledge to make lucrative business deals with foreign governments. It is shocking to learn that an ex-CIA deputy chief, Vernon Walters, was soliciting business with Moroccan officials within a year after he left the agency, despite the fact that even in his own view this was improper.

Mr. President, that is an editorial from the Baltimore Sun, dated October 11.

I now would like to read an editorial from the Nevada State Journal. The title of this editorial is "Slamming Shut Another Door."

SLAMMING SHUT ANOTHER DOOR

Here they come again, closing public doors faster than the public can turn around to see the doors slam shut.

"They" are our Washington representatives. And what they are closing, steadily, surely, and with increasing speed, is access to government.

In the latest instance, the House rode roughshod over its own Intelligence Committee Sept. 23 and voted to make it a federal crime to disclose the identity of a U.S. intelligence operative even if the operative's name is a matter of public record. And the act would be a crime no matter what the circumstances involved.

The committee had recommended making disclosure a crime only when there was "intent to impair or impede the foreign intelligence activities of the United States." But the House would have none of this, and voted 354 to 66 to install a sudden floor amendment to make disclosure a crime even if the news media were reporting the names of agents engaging in illegal activities, or trampling on citizens' rights.

The penalty: 10 years in prison and a $50,000 fine for past or present government officials, and three years in prison and a $15,000 fine for journalists.

This bill of course arose from a legitimate concern about the safety of agents. Former CIA officer Philip Agee has made a new and despicable career out of exposing agents, endangering their lives, and damaging the overseas operations of the CIA. And publications such as the Covert Action Information Bulletin and Counterspy routinely print the names of overseas CIA agents with the avowed intent of hindering their work. One would be hard pressed to defend any of these activities; and, in fact, few have—while many have quite properly condemned them.

Yet, the House of Representatives, in its concern about these revelations, is creating an equal danger. It has declared that public records are not public, that intent is no factor, and that constitutionality does not matter.

For make no mistake about it—the House bill's constitutionality is clearly questionable, according to legal scholars and other experts who testified before the committee.

What the floor amendment did was make the disclosure of an identity a crime whenever the government has reason to believe it might impair or impede foreign intelligence activities. This makes the government the accuser, the witness and the judge; i.e., it places the government in the role of dictator, able to conceal its own mistakes as well as disclosure of agents, without let or hindrance.

But there is more: Rep. Ted Weiss, D-N.Y., complained that this bill "presents an incursion on the First Amendment unparalleled in the history of the nation during peacetime. Never has the publication of information in the public domain by private citizens been made an offense."

Mr. CHAFEE. Mr. President, will the Senator yield for a question?

Mr. BRADLEY. I would be prepared to yield for a question as soon as I have located the Rhode Island newspaper editorial.

Mr. CHAFEE. When does the Senator think that might be?

Mr. BRADLEY. If the Senator is inquiring regarding the time, I have only had a chance to read four of the editorials into the Record. I think the entire Senate should benefit from what the leading editorial writers of the country have to say about this prior to yielding for a question.

(Mr. RUDMAN assumed the Chair.)

Mr. CHAFEE. Do I understand the Senator's answer to be that he will not yield for a question?

Mr. BRADLEY. At this time I will not yield for a question. I feel it is important that the Senate have the benefit of this information. I know that the distinguished Presiding Officer, the Senator from New Hampshire, is anxious to have the benefit of this information, and that the entire Senate is.

Therefore, I would like to continue reading this editorial from the Nevada State Journal dated Monday, October 5, 1981.

It goes on:

In all intellectual modesty, one must ask how "secret" agents whose names are already in the public domain are endangered by the publication of their names. Certainly the "enemy," whomever that might be at a given time, would already have ferreted out this information. Under this bill as it stands, it really seems that it is the bureaucracy which is the main object of protection, rather than CIA agents. And it is the public which is most injured.

The Senate Judiciary Committee is scheduled to vote tomorrow on a similar bill, containing the same "reason to believe" language. Nevadans should object vigorously to the bill in its present form. Time is short, but the bill can be defeated even now, if the public shows it knows the dangers created by the bill.

Let us protect overseas agents adequately. But let us do so through constitutional means which protect our control of government as well as the agents.

Mr. President, that is the editorial from the Nevada State Journal.

I see the distinguished Senator from Kentucky on the floor. I thought he might be interested to know what the Louisville Times had to say about this matter. The Louisville Times, on Wednesday, October 21, said, in an editorial under the headline, "Bad Bill, Better Bill, Senate Should Resist House CIA Measure."

I now quote what the Louisville Times had to say on October 21. I am sure the Senator from Kentucky has read the editorial.

Mr. HUDDLESTON. The Senator is right.

Mr. BRADLEY. The editorial states:

If there's a lesson to be learned from the government's lethargic reaction to the disclosure that former CIA agents helped Libyan terrorists, it's that public scrutiny of the intelligence agency is more necessary than ever.

Yet the House of Representatives, urged on by the Reagan administration, has passed a bill that could severely penalize newsmen and other researchers who disclose names of spies when reporting on intelligence activities.

Senators Huddleston and Ford can help head off this ill-conceived measure by backing a much tighter Senate version, which could come to the floor as early as this week. Mr. Huddleston has a special interest since he helped draft a charter designed to keep the CIA within constitutional bounds.

Both bills have the worthy goal of protecting undercover agents stationed abroad. On two occasions, CIA employees were attacked after anti-agency zealots disclosed their identities.

The trouble is that reporters and scholars and, for that matter, all private citizens, could be fined and jailed even if they "reveal" names gleaned from unclassified sources.

One result, whether intended or not, would be to discourage legitimate, necessary discussion of CIA failures, blunders and abuses, of which there have been plenty. Under the House bill, a prosecutor would only have to prove a reporter had "reason to believe" his investigation would impair or impede intelligence activities. Well documented stories often "impair or impede" misguided government programs.

Defenders of this approach argue lamely that newsmen and other citizens could report intelligence misdeeds to Congress, the CIA director or the Justice Department. These, of course, are the same folks who have been less than eager watchdogs in the past.

Or, goes the argument, critical material could be published without the names of wayward agents. In many cases, however, such self-restraint would simply contribute to a cover-up.

The Senate Judiciary Committee has come up with a better bill, and the Kentucky senators should join those who hope to fend off amendments. Under the Senate version, a citizen could be successfully prosecuted only if he disclosed names with malicious intent to disrupt intelligence work. That language could not easily be stretched to cover legitimate reporting.

President Reagan has given the senators another excellent reason to resist changes in tehir bill. He is considering a plan to allow the CIA to spy on American citizens, open mail, infiltrate legal groups and all the rest. This is not the time, in short, to relax surveillance of the intelligence community.

Mr. President, that is the editorial from the Louisville Times of October 21, 1981.

The next editorial comes from the Richmond Times Dispatch on the 15th of October. It is called "Protecting U.S. Spies."

Philip Agee, a former CIA agent, indulged in the despicable practice of publishing the names of U.S. intelligence agents abroad in an effort to destroy their effectiveness. In the process, he gravely endangered the lives of these persons.

A law is needed to enable the government to move forcefully against anyone who intentionally puts our secret agents in jeopardy by revealing their identities. Congress is in the process of enacting such legislation.

The House of Representatives passed a bill designed to achieve that goal, but many people worry that while the bill's intent is laudable, its wording runs afoul of the First Amendment's protection of free speech. The bill would make it a crime for anyone to

publish such names if he had "reason to believe" it could endanger the persons named. The fear is that a newspaper or broadcasting station or an individual writer might effectively be prevented from making public information about government corruption involving an intelligence agent if a government representative warned in advance that the publication could damage the agent.

So the Senate Judiciary Committee has voted 9-to-8 to narrow the bill to the extent that a person could be prosecuted for revealing agents' names only if he acted with specific "intent to impair or impede" the nation's intelligence activities. There was not the slightest doubt that Philip Agee acted from such a motive.

It is not easy to draft a bill that attains the proper balance between protecting agents' identities, on the one hand, and First Amendment rights, on the other. The most effective protection of the agents might be provided by making it illegal to publish their names under any conditions, but that would do violence to the principle of free speech, since there could be unusual situations in which such publication would be justified in the overall national interest.

The Senate committee amendment appears to represent a reasonable effort to strike the proper balance.

Mr. President, that is the editorial from the Richmond Times Dispatch on October 15 of this year.

The next editorial comes from the Philadelphia Inquirer and it is entitled "Agents Disclosure Bill Must Address Intent Issue."

I now read the editorial.

Tomorrow, the Senate Judiciary Committee is expected to consider legislation that would make it a crime to disclose the names of agents of the Central Intelligence Agency or other U.S. intelligence operatives working abroad even if that disclosure was completely innocent and unintentional. Despite the fundamental challenge to the First Amendment, the measure as now written has widespread support in Congress and the backing of the Reagan administration.

Given the inevitability of passage by the Judiciary Committee of some sort of agent identity disclosure bill, those senators who see the dangers to the Constitution it raises must act to clarify the intent and purposee of the legislation through an amendment. Key votes will be cast by Sens. Arlen Specter (R., Pa.) and Charles McC. Mathias Jr. (R., Md.). The Democratic minority on the committee, led by Sen. Joseph R. Biden Jr. of Delaware, needs the Mr. Specter's and Mr. Mathias' votes to amend the measure.

The bills pending in the Senate and House are aimed at a small, Washington-based publication called Covert Action Information Bulletin. . . .

Mr. President, I say parenthetically that the "Covert Action Information Bulletin" has ceased publishing the names of our covert agents until this law, if it is passed, in whatever form, is tested for its constitutionality.

I ask unanimous consent to have printed in the RECORD, following the editorial from the Philadelphia Inquirer, the statement from the Covert Action Information Bulletin, saying, "this will be our last naming of names column until such time as the constitutionality of the act has been decided by the courts."

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BRADLEY. Mr. President, I continue reading from the Philadelphia Inquirer editorial:

The bills pending in the Senate and House are aimed at a small, Washington-based publication called Covert Action Information Bulletin, which previously has printed the names of CIA agents working abroad. The bulletin is the work of a renegade, ex-CIA agent Philip Agee, who has vowed to disrupt and destroy U.S. intelligence operations around the world by exposing agents' identities. In a related matter, the U.S. Supreme Court recently upheld the authority of the secretary of state to revoke passports of citizens whose activities abroad the secretary believe pose a threat to national security. The decision grew out of revocation of Mr. Agee's passport.

In the official haste to address the legitimate threat posed by Mr. Agee's activities, the Supreme Court and the Congress have chosen to weaken the First Amendment rights of every American citizen. Unless amended, the bill being voted on by the Senate Judiciary Committee tomorrow carries that process inexorably forward.

The bill must not leave the committee without a clear and carefully worded amendment that addresses the issue of the intent of those who disclose agents' identities. In the House, a subcommittee recently voted out a similar bill with an amendment that makes disclosure a crime if the purpose was to impair or impede intelligence activities. While proving intent in this instance would raise complicated legal questions, the amendment at least offers some First Amendment protection. The Senate version, however, is silent on intent.

Without an amendment similar to that approved in the House subcommittee, the Senate version as now written is so broad that it could even make negligent disclosure a crime.

Sponsors of the agents' disclosure measures in the Congress insist their only intent in enacting the legislation is to protect covert intelligence activities that are necessary for national security. They assert the bills in no way are an attempt to restrict First Amendment guarantees of all Americans. If that is the case, they, as well as moderates in the Congress who see the threat to free speech posed by the bills, should accept amendments that made that intention clear and straightforward.

That is the editorial from the Philadelphia Inquirer.

The problem they point out—that is, the need to protect covert agents and at the same time provide a right for the public to know and to protect freedom of the press—was addressed in the bill that came from the Senate Judiciary Committee.

EXHIBIT 1

COVERT ACTION INFORMATION BULLETIN

NAMING NAMES

Because of the imminent passage of the Intelligence Identities Protection Act, this will be our last "Naming Names" column until such time as the constitutionality of the Act has been decided by the courts. Although we continue to believe that the Act's application to the research which generates this column is unconstitutional—since our sources are not classified material—we believe it would be counter-productive to make the publication of this column under the new law the sole basis for a legal challenge. Much other research work is affected, and many other publications are involved. Moreover, we intend to continue to publish the Bulletin, the balance of which remains, we believe, extremely valuable, and to continue our struggle against covert operations and U.S. secret intervention around the world.

Mr. BRADLEY. Mr. President, as I stated in my initial statement, the Justice Department and the CIA have said time and time again that the bill that came from the Senate Judiciary Committee is enforceable and is constitutional.

It seems to me that it will be necessary to continue reading some of these editorials and to reassert that this is a very tough call. It is a call between the public's right to know, freedom of the press, and the need to protect covert individuals with the CIA operating abroad. The Senate Judiciary Committee bill does that very well.

As I have said, the list of articles written in the last several years, in which agents have been named, is quite lengthy. The articles deal directly with illegality and impropriety.

In my view, when this amendment is debated fully, I think it will be necessary for the proponents of the reason-to-believe standard to respond to such articles on domestic spying as those by Seymour Hersch, in the New York Times of December 22, and by Jerry Larder in the Wall Street Journal of March 1, 1977, to say why or why not—why these do or do not violate the purpose of this legislation.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator yield so as to allow the distinguished majority leader and me to proceed with the routine matters at this time? I do not presume to speak for the distinguished majority leader, but perhaps the majority leader and the Senator could indicate what may be the prospects for termination of further debate on this motion today.

Mr. BAKER. Mr. President, if the Senator will permit me, I think it is clear now that the Senator from New Jersey does not intend to let us go this evening to final disposition of even the motion to proceed. I understand that. I do not see any point in belaboring the issue.

I acknowledge that, at this late date in the session, the Senate can stop that, and I do not intend to ask the Senate to spend a great deal more time on this measure at this time.

I will say to the Senator from Rhode Island, who is a sponsor of the principal amendment, and the manager of the bill, the Senator from Alabama, that I continue to feel that this is an important measure and that the differences of Members in respect to our approach to this subject must be reconciled at some point, and that it would be my intention to return to the consideration of this measure early next session.

For the time being, Mr. President, I am prepared to take the bill down and to proceed to other matters.

In further answer to the question of the minority leader, there is a conference report at the desk on water pollution which must be dealt with at this time, the conference report on H.R. 4503, together with a file of routine matters that have been cleared on his side.

So if the Senator from New Jersey is willing to do so, and I have no desire to stop him if he wishes to keep going, but if he is prepared to do so I am prepared at this time to withdraw my motion to proceed with the assurance of my colleagues here that we will find an early

place for this in the scheduling of the session next year.

Mr. PROXMIRE. Mr. President, will the majority leader yield to let me insert in the RECORD a statement on the identities bill?

Mr. BAKER. I am happy to but I guess the floor really belongs to the Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey has the floor.

Mr. BRADLEY. Mr. President, I will yield without losing my right to the floor.

Mr. PROXMIRE. Mr. President, I ask unanimous consent to——

Mr. CHAFEE. Mr. President, is the request by the Senator from Wisconsin subject to objection or is that solely under the control of the Senator from New Jersey? In fair play here the remainder of us have statements. The Senator from New Jersey has not permitted anyone to ask him a question yet on this side in opposition to his position throughout this debate. It semes to me this is a one-sided operation he is operating here.

He suggested earlier that he wanted to debate here but debate has consisted of him talking all evening and now permitting statements favorable to him to come in.

My question is, Are other written statements to be permitted from others? I admit we will not have time to debate it.

The PRESIDING OFFICER. The Chair advises the Senator from Rhode Island that the Senator from New Jersey has the floor, and he yielded to the Senator from Wisconsin for the purpose of inserting under unanimous-consent request a statement into the RECORD. If the Senator from Rhode Island objects then of course the statement will not be inserted.

Mr. CHAFEE. Unless that same privilege is to be accorded to others I do indeed object.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. I thank the majority leader for his consideration on this issue and I have no need to continue laying the groundwork for the real debate on this issue which I hope will take place.

Mr. BAKER. Mr. President, if the Senator will yield to me, I am prepared to withdraw my motion.

Mr. BRADLEY. I yield.

Mr. BAKER. Mr. President, I withdraw my motion to proceed to the bill at hand.

The PRESIDING OFFICER. The motion is withdrawn.

ORDER OF BUSINESS

Mr. BAKER. Mr. President, I inquire of the distinguished minority leader if he is prepared at this time to proceed to the consideration of the conference report on H.R. 4503.

Mr. ROBERT C. BYRD. Yes, Mr. President, we are prepared on this side.

MUNICIPAL WASTEWATER TREATMENT CONSTRUCTION GRANT AMENDMENTS OF 1981—CONFERENCE REPORT

Mr. BAKER. Mr. President, I submit a report of the committee of conference on H.R. 4503 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4503) to amend the Federal Water Pollution Control Act to authorize funds for fiscal year 1982, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of December 14, 1981.)

● Mr. STAFFORD. Mr. President I am pleased to be able to commend to the Senate the conference report on H.R. 4503 the Municipal Wastewater Treatment Construction Grant Amendments of 1981. Under the able and diligent leadership of my friend from Rhode Island Senator JOHN CHAFEE, the conferees have produced an agreement that merits the support of the Senate. Furthermore, it is a bill worthy of the approval of the President.

I would like to take a few minutes to explain why I think this agreement is good for the country in general, and, on a more parochial note, also good for the smaller, rural areas like those I am privileged to represent.

The bill we are sending to the President represents a genuine reform in the municipal wastewater treatment construction program operated by the Environmental Protection Agency. The principal objectives of the legislation proposed by the administration last April will be achieved in this bill.

The most significant difference is that, whereas the administration's proposals were to take effect on enactment, our bill provides a period of transition from the old rules to the new. Let me be specific.

The administration proposed three major changes in the current program. First, only projects that provide actual treatment of wastewater, either secondary or more stringent treatment, and related interceptor sewers would continue to be eligible for Federal cost-sharing assistance. Other categories of construction, such as new sewer collection systems or correction of combined sewer overflows, or sewer maintenance or rehabilitation, would no longer be eligible.

Second, the costs of providing reserve capacity needed to serve populations beyond those existing in 1980 would no longer be eligible. Only backlog treatment needs would receive Federal assistance. Communities would finance their own growth.

Finally, the administration proposed that highest project priority be given to those directly benefiting areas of urban-industrial concentrations, arguing that this would insure that Federal funding is focused on projects that yield the most pollution abatement for the money.

Except for this last item, which creates an undesirable urban bias in the program, the conferees agreed that these changes are needed.

Without them the program is inconsistent with the budget restraint policy proposed by the administration and adopted by Congress.

EPA's 1980 survey of State-identified needs estimated that the total capital costs of constructing projects that are currently eligible for grant assistance is $120 billion (expressed in January 1980 dollars). At 75 percent Federal cost sharing, the long-term Federal commitment to this program would need to be $90 billion. This amount is in addition to the $35 billion that Congress has appropriated under this program since fiscal year 1973.

The administration's proposal to reform the construction grant program is designed to fit within a budget framework of $24 billion; $2.4 billion for 10 years. This level is what would be needed to provide a 75-percent Federal share of the total cost of funding only projects for treatment plants plus interceptor sewers and only those needed to serve the existing population.

Throughout our deliberations, the Senate conferees pursued an agreement that would achieve the following:

First, establish the program reforms (with respect to eligibility, Federal cost-sharing and reserve capacity) within the period of reauthorization and allotment;

Second, provide for transition into the new program;

Third, permit flexibility in State program management; and

Fourth, reduce the remaining potential cost to the Federal Government over the life of the program from the present estimate of $90 billion to about $30 billion.

In my judgment the conference agreement satisfactorily accomplishes these aims. On the major points, we agreed to a reform program that includes:

First. A 3-year transition period during which all construction project categories (treatment plants, interceptors, collectors, infiltration or inflow correction, combined sewer overflows, et cetera) and planned reserve capacity continue to be fully eligible for a 75 percent Federal grant.

Second. Thereafter, beginning October 1, 1984, the new program requirements would take effect. That is, the Federal share for construction would go to 55 percent, reserve capacity costs would no longer be eligible, and only projects for secondary or more stringent treatment, for interceptor sewers and infiltration/inflow correction would continue to be

eligible for Federal assistance after the 3-year transition.

Third. Except that, certain projects that begin construction before October 1, 1984, will continue to be eligible for the 75 percent cost share and the planned capacity, to completion.

Where a treatment system—consisting of a secondary or more stringent treatment facility and its related interceptor—receives a step III construction grant award prior to October 1, 1984, subsequent phases or segments necessary to complete these portions of the treatment works continue to be eligible for 75 percent Federal funding, and for the 20-year reserve capacity as planned for these portions of the system. In the case where an interceptor project received a step III construction grant award prior to the date of enactment of these amendments that provided a larger reserve capacity—but not to exceed 40 years—that reserve capacity shall continue to be eligible for funding.

Fourth. In addition, beginning October 1, 1984, a Governor has discretion to divert up to 20 percent of the State's annual allotment to project categories that are otherwise no longer eligible as of that date—new collection systems, for instance. The grant amount for such projects shall be 55 percent, the prevailing Federal share beginning October 1, 1984.

Fifth. A 4-year authorization and State allocation formula—to October 1. 1985. This is essential to both achieve the new program within the period of reauthorization and facilitate a 3-year transition.

This approach relies heavily on the State process for establishing project priorities, and is intended to encourage the advancement of a State's most important projects. On the other hand, the fact that certain project segments or phases may continue to receive reserve capacity and 75 percent Federal assistance until completion, where construction of a treatment system begins before October 1, 1984, should not be interpreted to encourage the practice of project segmenting or phasing.

The Administrator of the Environmental Protection Agency is expected to develop clear definitions and criteria for funding grants for such projects, particularly those initiated after the date of enactment of these amendments. Consideration should be given to the cost of the entire treatment works in relation to the size of a State's annual allotment, the construction time needed to complete eligible treatment works, and whether funding can be provided for a logical portion of a project each year. Consideration should also be given to whether court orders have imposed construction and funding schedules based on project segmenting.

EPA is also expected to encourage and assist in the timely completion of ongoing phased and segmented treatment works projects that have received a portion of their construction funding prior to enactment of these amendments. We do not intend to encourage the initiation of new projects unless there is reasonable expectation that Federal funds will be available to complete projects already begun, old and new.

On a more parochial note, speaking now as the Senator from Vermont, I would like to comment on several other provisions of the conference agreement which particularly concern the smaller rural communities of the Nation. The conference agreement preserves and improves several important aspects of the existing Clean Water Act, which the administration's bill had proposed to eliminate:

First. The minimum allotment of appropriated funds to any State remains at one-half of 1 percent. Assuming the full appropriation of $2.4 billion, Vermont and other minimum States would receive about $12 million annually.

Second. The mandatory set-aside of 4 percent of a rural State's allotment for alternatives to conventional treatment technology is preserved.

Third. The innovative and alternative technology program, is extended as a permanent part of the construction grant program, and funds for the bonus are increased.

Fourth. The priority emphasis on projects serving "urban-Industrial concentrations" is not included. Instead, the establishment of priorities continues to be based on meeting the goals of the Clean Water Act and is determined by the States.

Other features of particular interest to small communities include raising the limitation for projects eligible for combined step II design and step III construction grants to $8 million. Also, the conference agreement mandates the advancement of planning and design grant assistance to small communities which cannot otherwise undertake these costs. The administrator is expected to establish regulations or provide guidance to States to implement this provision, including the determination of what communities qualify for such assistance.

In addition to the matters I have just discussed, I have taken a particular personal interest in another matter which I would like to discuss at this point.

One issue that arose in the conference was the provision in the Senate-passed bill clarifying that the Clean Water Act does not displace or limit other Federal or State law, including common law. This provision was stimulated by the Supreme Court's decision in City of Milwaukee against Illinois, in which the Court incorrectly interpreted Congress intent to displace Federal common law with the regulatory scheme of the Clean Water Act.

The House had not held hearings or considered this matter, and felt that would be necessary to properly craft a response to the Supreme Court's decision. Accordingly, the Senate receded on the provision with the understanding among the conferees that failure to include the provision is without prejudice, and with an agreement to examine further in the next session the best means to accomplish their intent not to displace remedies other than those under the Clean Water Act.

Milwaukee is an extraordinarily troublesome decision for three reasons.

First, because of its implications for the Clean Water Act.

Second, because of its implications for other Federal statutes.

Third, because of its implications for State common law. The premise of the Milwaukee decision is that a comprehensive scheme of regulation displaces the related Federal common law. I do not agree that the Clean Water Act is a comprehensive scheme of regulation.

The Milwaukee case itself was restricted by its terms to only the Clean Water Act and Federal common law with respect to water pollution. However, the rationale of Milwaukee was quickly extended to other substantive areas. In Middlesex County Sewerage Authority against National Seaclammers Association, the Court held that the existence of the Marine Protection, Research, and Sanctuaries Act (which regulates ocean dumping) displaced Federal common law in that field as well.

Clearly, the rationale of Milwaukee could be extended to a virtual universe of problems. Schemes of Federal regulation exist for water, air, toxics, noise, hazardous waste, and other of environmental media. Again, while I do not believe any of these schemes are nearly as comprehensive as the Clean Water Act, a court might find one to be so.

Further, there is the great risk that the decision might not be restricted just to environmental regulation or just to Federal common law. Whatever Federal common law might exist regarding securities, transportation, communications, food purity, drug efficacy, and the like, could, under unwise extensions of the Milwaukee rationale, be displaced.

Moreover, if Federal common law is to be displaced, there is the unacceptable risk that State common law might be displaced as well. In fact, in a recent Massachusetts case—McMahon against Amoco Oil Co.—the State sued for contamination of ground water caused by waste oil. This was not covered by the Massachusetts water pollution control act, so the suit was based on State common law. The defendant, Amoco, raised as a defense the Milwaukee case, asserting that State common law had been displaced. This was rejected by the court, but illustrates the dangerous potential of the Milwaukee decision.

In another case—this one closer to home for this Senator—residents of Vermont have filed suit against International Paper for water pollution originating in upstate New York. International Paper has said it is not liable because Federal common law is displaced pursuant to Milwaukee.

Section 23 of the Senate-passed bill would have restored the situation to what Congress intended, and indeed expected until the Supreme Court's surprising decision.

Until 6 months ago, the present state of affairs with regard to Federal common law did not exist. There was a Federal common law which applied to cases of interstate water pollution. It was the same Federal common law which had